

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

DEMETRIUS L. NEELY, #1104743,

Petitioner,

v.

ACTION NO. 2:13cv274

HAROLD CLARKE,
Director, Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to Petitioner's convictions for possession of cocaine with intent to distribute, second offense; possession of a firearm by a convicted felon; possession of a schedule I/II drug while in possession of a firearm; and possession of marijuana, on June 30, 2008, in the Circuit Court of the City of Portsmouth. As a result of the convictions, he was sentenced to fifty years and six months in prison with nine years suspended.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation.

The Report and Recommendation, filed February 7, 2014, recommends dismissal of the petition. Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Magistrate Judge granted Petitioner's Motion for Extension of Time to File Objections. ECF No. 21. On March 17, 2014, the Court received Petitioner's Objections to the Report and Recommendation. ECF No. 22. Petitioner objected to the Report and Recommendation on the grounds that his trial and appellate counsel were ineffective, leading to his long sentence and excusing his procedural defaults.


The Court, having reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation filed February 7, 2014. It is, therefore, **ORDERED** that the Petition (ECF No. 1) be **DENIED** and **DISMISSED** and Respondent's Motion to Dismiss (ECF No. 13) be **GRANTED**. It is further **ORDERED** that judgment be entered in favor of Respondent.

Petitioner has failed to demonstrate "a substantial showing

of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

The Clerk shall mail a copy of this Final Order to Petitioner and counsel of record for Respondent.

/s/
Rebecca Beach Smith
Chief
United States District Judge 

Rebecca Beach Smith
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
March 24, 2014